

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 29, Section 1709(a)
of the Construction Safety Orders

Maximum Allowable Load**SUMMARY**

This rulemaking is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in DPS Plastering, Inc., Docket 03-R3D3-2731, dated April 2, 2008, in which the employer received a citation from the Division of Occupational Safety and Health (Division) for overloading part of a suspended ceiling structure in excess of its designed capacity. There was an employee applying the second of three coats of plaster to a suspended ceiling from a scaffold when the ceiling collapsed striking the employee and seriously injuring him. The Division's subsequent accident investigation revealed the cause of the collapse to be the failure of the ceiling suspension system.

The OSHAB Administrative Law Judge (ALJ) dismissed the citation. The standard's lack of a definition of the term "designed capacity" led the ALJ to use extrinsic definitions which in turn led him to focus on the architect's design for the structure, a focus which gave rise to evidentiary problems that resulted in the failure of the Division's case. An additional problem for the Division was the ALJ's conclusion that the cited employer, a plaster subcontractor, was not responsible for the building design, and that, for this reason as well, it was not proper to cite that employer for violating Section 1709(a).

Board staff believes Section 1709(a) should be clarified so that it may better help prevent serious injuries of the sort that befell the employee in the OSHAB matter.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1709. General Requirements.

This section contains general requirements for the erection and construction of structures, including, but not limited to, load bearing capacity, bracing, wood floor construction, and erection guides for trusses and beams over 25 feet long.

Existing subsection (a) prohibits any building, structure or part thereof, or any temporary support or scaffolding from being overloaded in excess of its designed capacity.

Amendments are proposed to clarify that none of the structures indicated above are to be subjected to loads unless it is determined to be safe to do so by a qualified person who has experience in structural design. The proposed wording is derived from federal standards (29 CFR 1926.451(a)(6) and 1926.701(a)). The proposed amendment will require the employer to consult with a qualified person with experience in structural design prior to placing a load on a building, structure, structural member, or scaffold to ensure that the load can be safely supported. The proposal is necessary in order to enhance employee safety by removing reliance on an ambiguous term “design capacity” and removing ambiguity as to who is responsible for determining the structure’s ability to bear the load.

DOCUMENT RELIED UPON

1. Occupational Safety and Health Appeals Board Decision in DPS Plastering, Inc., Docket 03-R3D3-2731, dated April 2, 2008.
2. 29 Code of Federal Regulations, 1926.451(a)(6), Scaffolds, General Requirements.
3. 29 Code of Federal Regulations, 1926.701(a), Concrete and Masonry Construction, General Requirements.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.